

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 04-227
Competition in the Market for the)	
Delivery of Video Programming)	

COMMENTS OF PAXSON COMMUNICATIONS CORPORATION

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SUMMARY

Another year has passed and the most important competitive issue facing the marketplace for video programming remains resolution of broadcasters' DTV must-carry rights. Another year without multicast must carry even though **the Commission has a clear statutory responsibility to recognize broadcasters' full digital multicast must-carry rights.** It is now clearer than ever that **ensuring broadcasters' competitive position in the post-transition world positively requires that cable operators be required to carry broadcasters' full digital signals, including multicast program streams, and that satellite providers' carry-one carry-all obligations extend to broadcasters' full digital signals.**

The Commission's *Notice of Inquiry* in this proceeding is misfocused on DTV transition issues as they appear from the perspective of most prosperous and popular television stations – major market network affiliates. **Congress has entrusted the Commission to protect not only the most profitable stations, but the entire over-the-air broadcasting system.** It is the public, religious, independent, and emerging network stations that face the greatest competitive challenges from the DTV transition and the Commission should focus its energy on the issues facing those stations. The most important competitive issues that most broadcasters face are the resource drain accompanying the DTV transition, coupled with the uncertainty of future DTV revenue streams. These broadcasters desperately need a resolution of the DTV must-carry issue so that they can finalize their DTV business plans in an environment free from doubt. As a competitive matter, these stations need the Commission to recognize Congress's will that all local broadcast signals be carried in their entirety so that they

can tap the multiple revenue stream opportunities that DTV provides while strengthening service to the public.

Accordingly, the Commission should use this proceeding to clarify its priorities by recognizing that:

- For many stations the only transition that makes sense is to a mix of HDTV and multicast SDTV;
- Cable operators and satellite providers have proven time and again that they will not carry most broadcasters' digital signals – whether HDTV or multicast – at all unless the Commission requires them to do so;
- Accordingly, the only way the transition can be accomplished is through the requirement of full digital multicast must-carry; and
- Over-the-air DTV reception issues will need to be fully resolved before the transition can be completed.

The record the Commission has compiled in several proceedings now plainly demonstrates that full digital multicast must-carry offers broadcasters the best opportunity to compete with multichannel video providers and offers the public the best chance at receiving new diverse local programming. **The Commission has a rare opportunity to promote facilities-based competition while simultaneously promoting many other important public policy goals including program diversity, localism, and broadcast decency. Such a chance is unlikely to come again.**

Multicasting is the bright future of DTV and the most likely driver of broadcaster participation in video programming competition. If the Commission is serious about completing the DTV transition in this decade and fostering the optimal amount of

competition in the video delivery industry, it will recognize the promise of multicasting and order full digital multicast must-carry without further delay.

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Paxson Communications Corporation (“PCC”)¹ hereby files these comments in response to the Commission *Notice of Inquiry* in the above-captioned proceeding.² Although more than a year has passed since the Commission initiated its last video competition inquiry, the chief competitive issue facing the video delivery industry remains resolution of broadcasters’ DTV must-carry rights. In short, **to maintain its future vitality, the national free over-the-air broadcasting system needs the Commission to recognize broadcasters’ statutory right to full digital multicast must-carry.** The longer the Commission delays its decision on this issue, the more

¹ PCC owns and operates one of the largest television station groups in America, as well as PAXTV, a full-service, family-friendly, over-the-air television broadcast network. PCC supplies programming to cable operators and DBS providers across the country through its owned and operated stations, its affiliates, and where no PAXTV signal is available over the air, through voluntary carriage agreements. PCC has been a leader in the DTV transition, constructing more than 40 full-service DTV television stations and leading the way in DTV multicasting, an idea that PCC pioneered and that now has become commonplace.

² Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Notice of Inquiry*, MB Docket No. 04-227, FCC 04-136 (rel. June 17, 2004) (the “*NOI*”).

quickly it hastens the day when the only relevant competition in the video delivery market will be between cable operators and satellite television providers to whom consumers must pay ever-increasing monthly fees; the day when free over-the-air broadcasting becomes a backwater and ceases to provide the high-quality, diverse, free local television services that Americans have a right to expect from the public spectrum. Unfortunately, the NOI finds the Commission expressing a multitude of misconceptions about the DTV transition and the role that cable and satellite carriage must play in its completion – misconceptions that by now should have been dispelled by the overwhelming number of comments that the Commission has received demonstrating the urgent need for full digital multicast must-carry.

Worse yet, the Commission appears to be focused on the DTV transition only as it is occurring for the most prosperous television stations, while neglecting the needs of the independent, public, faith-based, and emerging network stations that form the bulk of the television broadcasting industry. **The Commission should not need to be reminded that Congress and the Supreme Court have recognized the importance of preserving the entire over-the-air broadcasting system, not just the major market network affiliates.** Thus, PCC files these comments to again inform the Commission of the important role that DTV must-carry will play in the future digital television market and the immediate need for full digital multicast must-carry if broadcasters are to maintain their position as the preeminent providers of local television service to communities across the nation. If the Commission continues to refuse to act on full digital multicast must carry, then it would be far more honorable for

the Commission simply to tell Congress that it favors the end of free television broadcasting in this country!

I. THE NOI SHOWS A DISTRESSING LACK OF UNDERSTANDING OF THE IMPORTANCE OF MUST-CARRY TO MOST LOCAL BROADCASTERS.

The NOI aptly demonstrates the Commission's failure to grasp the important role of must-carry, including full digital multicast must-carry, to the preservation of competition in the video delivery marketplace. As Congress recognized in 1992, must-carry is essential to competitive balance in local video delivery markets. Yet in the *NOI* and in its recent request for comment on cable operators' ability to offer *a la carte* programming,³ the Commission has shown itself more interested in examining supposed "abuses" of existing retransmission consent relationships than in ensuring cable and satellite carriage of local DTV broadcast signals. As the expert agency charged with enforcing Congress's policy of full cable carriage for all local broadcast signals, **the Commission's apparent hostility to Congress's must-carry/retransmission consent regime is entirely misplaced and dangerous to the future vitality of over-the-air broadcasting.**

For example, the Commission asks numerous questions about the extent to which broadcasters' retransmission consent revenues and their ability to gain cable carriage of affiliated cable networks can offset losses of advertising revenue to cable and satellite competitors, but asks nothing about the deteriorating competitive position

³ Comment Requested on A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and direct Broadcast Satellite Systems, *Public Notice*, DA 04-1454, MB Docket No. 04-207 (rel. May 25, 2004) (the "*Notice*").

of must-carry stations.⁴ This focus is totally inappropriate. The must-carry/retransmission consent regime was enacted as part of Congress's effort to preserve and protect the entire over-the-air broadcast system, not just the part of it that garners the highest ratings.⁵ Accordingly, the Commission should be focused on examining the competitive status of must-carry stations to ensure that the maximum diversity of local television voices is being preserved.

If the Commission examined this question properly, it would find a dangerous situation. For most local broadcasters, as well as emerging networks like PAXTV, the alternative revenue streams created by retransmission consent and affiliated network cable and satellite carriage are nonexistent. We still depend on advertising revenues as the lifeblood of our business, and those revenues are drying up. The most recent available numbers show cable and satellite cutting into broadcast advertising revenues to an unprecedented and accelerating extent.⁶ These declines in advertising revenues hit the most vulnerable broadcasters hardest, threatening the vitality of a large segment of the local, free over-the-air local broadcasting system. But the Commission has near at hand the remedy to this deteriorating set of circumstances: full digital multicast must-carry.

⁴ See NOI ¶ 57.

⁵ *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180, 192-193 (1997).

⁶ Michael McCarthy, *Upfront Ad Sales Cast Doubt on Broadcasters' Clout: More Buyers Choose Cable*, USA TODAY, July 19 at 2B.

II. TO PRESERVE AND PROMOTE LOCAL TELEVISION MARKET COMPETITION, THE COMMISSION MUST ORDER FULL DIGITAL MULTICAST MUST-CARRY.

The only hope for shoring up local broadcasters' eroding competitive position is the possibility of new revenue streams for stations other than those that already are most-watched. The best opportunity for creating those revenue opportunities while serving a whole host of other important Commission policy objectives is through the introduction of full digital multicast must-carry.

Multicast must-carry would make local broadcasters more effective competitors in local television markets in several ways. By making it economically feasible for broadcasters to offer multiple program streams, multicast must-carry would allow them to tap revenue streams for multiple channels, just as cable operators and satellite providers do. The increased revenues would give broadcasters the wherewithal to provide viewers with better local and national programming, feeding a virtuous circle that would require cable operators and satellite providers to offer more local programming to stay competitive.

Multicast must-carry also would increase local television market competition by allowing broadcasting to regain its position as a legitimate facilities-based competitor to cable and satellite. For example, in a five station market, if each station multicasts to its full potential, 30 channels would be available over-the-air. Given studies that show that viewers regularly watch only 15 television stations,⁷ the availability of as many as 30

⁷ P.J. Bednarski, *More than I Can Watch: The Number of TV Channels Is Growing Faster Than Our Interest*, BROADCASTING AND CABLE, July 9, 2001, at 18 (citing Nielsen Media Research study showing that customers that receive over 100 channels regularly watch only 17).

channels of free over-the-air programming would apply significant competitive pressure to cable operators and DBS providers. By creating a free over-the-air multichannel competitor to cable and DBS's pay services, multicast must-carry would exert a significant downward pressure on cable and DBS rates. Consequently, cable operators and DBS providers would no longer be free to pass every single cost increase onto consumers or pander to a few viewers' most prurient interests because viewers would have the ability to turn to a free multichannel competitor. Why does the Commission think the cable and DBS operators so strongly oppose multicast must carry now that they have plenty of channel capacity? It's the competition, stupid!

But multicast must-carry won't just help broadcasters compete more effectively: the attendant public-policy benefits are likewise easy to see. First, all television viewers – over-the-air and MVPD alike – would have a greater number of diverse programming choices, and broadcasters would be free to dedicate substantial periods of time to local public interest programming without compromising their competitive position by foregoing premium content to do so.

In the wake of the public's reaction to the Commission's media ownership rule decisions, the Commission has rightfully dedicated its energy to examining the quality of television service to local communities.⁸ **There remains no better way to enhance local community television service than to require full digital multicast must-carry.** With the potential for up to six multicast channels where once there was one, not only will viewers receive more diverse programming from more different sources,

⁸ Broadcast Localism, *Notice of Inquiry*, MB Docket No. 04-233, FCC 04-129 (rel. July 1, 2004).

broadcasters will be both able and required to find compelling content directed towards their local communities to fill those channels. This cannot help but provide additional outlets for local programming and programming aimed at currently underserved markets, including those for foreign language, faith-based, and local, community-oriented programming. Indeed, many broadcasters now have publicly committed to airing multicast program-streams that will feature large amounts of local and regional-interest programming.⁹

In addition, multicasting is sure to raise the moral standards and the level of political discourse by giving broadcasters the ability to air programming that is designed to do more than simply keep up with the increasingly indecent programming available on cable and satellite. Long before the Janet Jackson fiasco, PCC warned the Commission that broadcasters were being forced into a race to the bottom in which everyone would end up a loser.¹⁰ Then lo and behold a broadcast network let a cable programmer design the half-time show at the Super Bowl and all our worst apprehensions came true. Congress and the Commission have spent much of this year cleaning up the indecency mess, but the best answer is not to attempt, on a program by program basis, to police the content on the public's airwaves, but rather to expand the opportunities for broadcasters like PCC to show the world that there is more money to

⁹ See, e.g., Special Factual Submission in Support of Multicast Carriage by the NBC Television Affiliates Association, CS Docket No. 98-120, at 7-10, filed January 8, 2004; Update on ABC's Owned Stations' Multicasting Plans, MB Docket No. CS 98-120, filed November 20, 2003; Special Factual Submission of the CBS Television Network Affiliates Association in Support of Multicast Carriage Requirement, CS Docket No. 98-120, at 5-8, filed January 13, 2004.

¹⁰ See, e.g., Comments of Paxson Communications Corporation, MB Docket No. 03-172, at 6-7, filed September 11, 2003.

be made through quality family programming than through the smut that currently is so common. Until the Commission provides broadcasters with that opportunity, it can expect more of the same filth from some cable operators, DBS providers, and broadcasters alike. At the very least, multicasting would be a positive programming force because it would give the many broadcasters trying to combat the pressure to air increasingly indecent programming the opportunity to provide alternative programming to the many viewers that have turned away from television in disgust.

III. CABLE OPERATORS AND SATELLITE PROVIDERS HAVE DEMONSTRATED THEIR UNWILLINGNESS TO CARRY MOST BROADCASTERS' DIGITAL OR MULTICAST PROGRAMMING.

The Commission asks for information regarding cable operators' and satellite providers' carriage of broadcasters' DTV offerings,¹¹ but the Commission already has ample evidence that for the majority of broadcasters, DTV cable and satellite carriage remains nonexistent.¹² PCC's experience shows just how destructive cable operators' refusal to carry broadcasters' DTV signals can be.

PCC has invested many millions of dollars to build out its DTV stations. PCC currently owns and operates 56 analog television stations and 1 digital-only station. Of these stations, PCC has constructed 40 full-power DTV stations and 2 low-power stations. Of the 15 stations for which PCC has yet to construct digital facilities, 5

¹¹ See *NOI ¶¶* 59, 62.

¹² See Comments of Paxson Communications Corporation, MB Docket No. 03-172, at 11-13, filed September 11, 2003 (citing Reply Comments of the National Association of Broadcasters, MB Docket No. 03-15 at 29 (citing Cable World, *Skirmish in the Desert Over DTV*, April 14, 2003); Letter from Marilyn Mohrman-Gillis, counsel for the Association of Public Television Stations, Donna Gregg, counsel for the Corporation for Public Broadcasting, and Katherine Lauderdale, counsel for the Public Broadcasting Service to Chairman Michael K. Powell, dated February 27, 2003.)

stations have not even been allotted a digital channel yet, 5 have ungranted construction permits on file with the Commission, and 5 have unexpired construction permits. Thus, most of PCC's 15 unbuilt stations are unbuilt only because the Commission will not let PCC build. PCC had explored every available avenue for resolving the Canadian interference issues that delayed the grant of several of PCC's construction permit applications and continues to delay several others. PCC has made innovative proposals to obtain paired allotments for its stations that have only a single analog channel. PCC has requested authority to flash-cut to digital operations on its stations' analog channel where possible. In many of these cases the Commission has rebuffed PCC's efforts, but there is no broadcaster anywhere that has been more aggressive in attempting to build out its DTV facilities than PCC. And now that PCC has constructed nearly all its DTV stations just as the Commission requested? Now that PCC's DTV transition is all but complete? No one is watching. Why? Because few consumers have purchased DTV sets with over-the-air tuners and no cable operator or satellite provider has agreed to carry the digital signal of any of the 42 DTV stations PCC has constructed.

And PCC's experience is not unique – it is universal among non-major market network affiliates. Cable operators have made much of their claims to have entered into carriage arrangements for the high definition feeds of major-market network affiliates and some public broadcasting stations,¹³ but they have yet to cite a single example of a carriage agreement for the digital signal of a station that falls outside these categories.

¹³ See, e.g., *Ex Parte* Submission of NCTA, CS Docket No. 98-120, at 2, filed April 20, 2004.

In point of fact, the stations that have achieved digital carriage on cable systems nationwide are a tiny fraction of the broadcasters that have constructed digital facilities. Moreover, cable operators and satellite providers have yet to agree to carry multicast programming from most broadcasters, despite many years of effort on the part of broadcasters to negotiate such carriage.¹⁴ PCC has long been an advocate of multicasting as the future of DTV for many, if not most, broadcasters. And here again, PCC has put its money where its mouth is, multicasting 3-6 program streams on its full-power DTV stations. But of course, cable operators and satellite providers have ignored these efforts and refused to carry PCC's multicast programming.

And without cable and satellite carriage, multicasting surely will not gain the momentum to transform local television markets. The Commission began the transition by noting that cable operator participation would be required for a successful transition,¹⁵ but it has never required them to undertake any action that was not an immediate profit center for the cable operators, and multicast carriage for broadcasters simply does not fit that bill. To be sure, some cable operators have entered into a few high-profile agreements to carry a limited amount of digital broadcast programming. For example, Comcast's Washington, D.C., digital cable system now carries four multicast channels of programming offered by WETA-DT, Washington, D.C. Such arrangements,

¹⁴ Written *Ex Parte* Submission of the Association of Public Television Stations, the Corporation for Public Broadcasting, and the Public Broadcasting Service, CS Docket No. 98-120, at 3-4, filed March 4, 2004.

¹⁵ Carriage of the Transmissions of Digital Television Broadcast Stations, *Notice of Proposed Rulemaking*, 13 FCC Rcd 15092 ¶14 (Jul. 9, 1998) ("Based on the legislative history and the existing carriage provisions, we believe that the participation by the cable industry during the transition period is likely to be essential to the successful introduction of digital broadcast television and the rapid return of the analog spectrum to the Commission.")

however, only highlight the disingenuousness of cable operators' anti-multicast must-carry argument. For years now, cable operators have claimed that if they are forced to carry multicast stations, they will be required to drop important programming services like C-SPAN and other state public affairs channels.¹⁶ However, Comcast's Washington, D.C. system has added 4 channels of WETA-DT programming, as well as at least 4 local Washington HDTV channels¹⁷ and yet the Commission hasn't heard a peep about all the programming services that have been dropped. Why? Because of course Comcast has not been forced to drop any programming services. PCC has consistently pointed out that cable operators' public statements about the capability of their digital cable systems has belied the position they have taken before the FCC.¹⁸ The fact is that modern compression and statistical multiplexing technologies have mooted any legitimate concerns about limitations to cable capacity.¹⁹ A recent article in *Broadcasting and Cable* magazine features a great deal of hand-wringing about cable capacity, but in the end suggests that the amount of cable bandwidth that will be occupied by broadcasters will shrink by as much as two-thirds by the time all broadcast

¹⁶ See, e.g., *Ex Parte* Letter from Bruce Collins to Marlene H. Dortch, Esq., CS Docket No. 98-120, filed September 26, 2003 (reporting meeting involving representatives of state cable public affairs channels arguing that their survival depends on the defeat of full digital multicast must-carry); *Ex Parte* Letter from Daniel Brenner, Senior Vice President, Legal and Regulatory Affairs, to Marlene H. Dortch, Esq., CS Docket No. 98-120, filed October 16, 2001 (offering analysis purporting to show that cable operators lack space on their systems to carry digital broadcast channels).

¹⁷ Comcast's Washington, D.C. digital system carries HD feeds for WJLA-DT, Washington, D.C., WRC-DT, Washington, D.C., WUSA-DT, Washington, D.C., and WTTG-DT, Washington, D.C. See http://tvlistings2.zap2it.com/grid.asp?partner_id=national.

¹⁸ *Ex Parte* Letter from Lowell W. Paxson to the Honorable Michael K. Powell, CS Docket No. 98-120, at 5-6, filed January 16, 2004 (citing Matt Stump, *Fellows Gives the Street Preview of Tech's Future*, MULTICHANNEL NEWS, May 26, 2003 at 29).

¹⁹ *Id.*

signals are delivered digitally.²⁰ This story confirms what careful observers have always known: that cable operators can discharge their statutory multicast must-carry duty while offering all the new telephony and high-speed data services that they have promised their investors and customers. To the extent that the Commission maintains any doubt about whether cable operators' systems have sufficient bandwidth to handle broadcasters' multicast offerings,²¹ those reservations finally should be put to rest.

Moreover, even where cable operators are carrying local digital broadcast signals, they typically place those signals on higher-priced digital tiers, requiring cable customers to pay extra for the digital service and set-top box necessary to receive local digital broadcast programming. In light of the fact that it is permitting cable operators to profit from the carriage of digital broadcast programming, it is highly disingenuous for the Commission to ask whether broadcasters' requests that they be compensated for cable carriage of their digital signals is delaying more widespread cable carriage of DTV programming.²² It should go without saying that cable operators ought not to be permitted to tap yet another revenue stream on the backs of local broadcasters without compensating those broadcasters for their help in attracting new digital cable subscribers. If the Commission believes that such anti-competitive tactics are fair, then viewers have much to fear about the future of competition in local video delivery markets.

²⁰ Jonh M. Higgins and Ken Kerschbaumer, *85 Billion Dollars Later: 500 Channels and There's Still Too Much Going on*, June 14, 2004 at 1.

²¹ *NOI* ¶ 62.

²² *Id.*

On balance, cable operators' behavior with respect to carrying broadcasters' DTV and multicast signals shows the essential bottleneck control they still possess and that poses a danger to over-the-air broadcasting and to competition in the market for video programming distribution. The only way to ensure that cable operators' do not exercise this control in a way that distorts competition is for the Commission to order full digital multicast must-carry without further delay.

Moreover, the Commission must ensure that broadcasters' full digital signals are carried on satellite systems as well as cable. Satellite continues to gain market share among MVPD subscribers, topping 20% in 2003.²³ This means that simply requiring cable operators to fulfill their statutory multicast must-carry duties will not be enough to ensure that all viewers gain access to broadcasters' full selection of free over-the-air programming. Accordingly the Commission must clarify that satellite providers' carry-one, carry-all must-carry obligations extend to broadcasters' full digital multicast signals.

The Commission suggests in the *NOI* that satellite providers have grave concerns about their systems' ability to accommodate broadcasters' full digital signals.²⁴ The Commission has ample evidence that these concerns are as big a red herring as those endlessly expressed by cable operators.²⁵ As Capitol Broadcasting Company has shown, existing technology makes it possible for DBS providers to offer the full 19.4 kbs of a broadcasters' digital signal necessary to allow carriage of all local broadcast signals

²³ Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Tenth Annual Report*, 19 FCC Rcd 1606 ¶ 125 & Table 7 (2004).

²⁴ *NOI*, ¶ 62.

²⁵ See, e.g., *Ex Parte* Presentation of Capitol Broadcasting Company, CS Docket No. 98-120, filed February 5, 2004.

in high definition.²⁶ Because broadcasters' multicast signals will require no more bandwidth than a single HD signal, satellite operators obviously have the capacity to offer those signals as well. And just as new technology is continuously making it easier for cable operators to carry additional broadcast programming without compromising and other service that they provide, satellite providers are constantly obtaining new spectrum and improving that spectrum's ability to deliver more services to viewers.²⁷

If the Commission is to maintain competitive balance in local video markets, it must recognize that DBS providers, no less than cable operators, must be required to carry broadcasters' full digital multicast program streams. Anything less and the Commission will fail to fulfill Congress's aim that all television viewers will have access to the same services that are available free over-the-air.

IV. THE *NOI* SHOWS THAT THE COMMISSION HAS FALLEN BADLY OUT OF TOUCH WITH MOST STATIONS' DTV TRANSITION EXPERIENCE.

A. HDTV Will Not Be an Effective Business Model for Many Broadcasters.

The *NOI* asks numerous questions about the development of HDTV at the local level.²⁸ These questions are like salt in an open wound both for broadcasters like PCC that have pursued a full digital buildout for a great number of stations at an immense cost and for the many broadcasters who have struggled to build-out minimum DTV facilities and as yet have no idea how they will finance a full-power build-out once the Commission decides to require it. These broadcasters obviously do not have the

²⁶ See *id.*

²⁷ See *id.*; Mike Farrell, *Rainbow DBS Rules Waves*, MULTICHANNEL NEWS, July 19, 2004, at 92.

²⁸ See *NOI* ¶ 60.

reserve capital necessary to switch over to local HDTV programming production. Nor is there any reason for them to do so. Consumers may find certain types of event programming are more enjoyable in the HDTV format but for traditional local news, talk, and public affairs programming, converting to high definition production equipment at this point would provide almost no added value to viewers. At some point in the far distant future, all television production may migrate to high definition production due to economies of scale, but in the short term, the Commission should not expect cash-strapped local broadcasters to make that transition – certainly not until broadcasters' DTV operations begin to generate some return on the tremendous investment that already has been required.

By focusing on HDTV, the Commission again is focusing only on the DTV transition as it effects the most popular and prosperous stations. These are the DTV stations described above – network affiliates in major markets – that cable operators already are carrying as a lure to early-adopting DTV households to order high priced digital cable packages. Obviously, without DTV must-carry, stations outside this select group have no incentive, not to mention resources, to adopt any local digital production. From the standpoint of video competition, any investment in local DTV production by these stations would inhibit competition by draining even more resources from the production and acquisition of quality programming that actually serves the needs and desires of viewers. If the Commission adopts full digital multicast must-carry with its attendant additional revenue opportunities for local broadcasters, the Commission's questions regarding local DTV production investment will begin to make sense. Until

then, the Commission should be reluctant to even hint that broadcasters should be making these types of production upgrades.

B. The Lagging Quality and Quantity of Over-the-Air DTV Reception Seriously Threatens Local Broadcasters' Ability to Compete.

Now that the Commission apparently is contemplating an expedited transition that will see the return of analog spectrum by 2009,²⁹ it is appropriate that the Commission is turning its attention back to the issue of DTV reception quality.³⁰ After all, the DTV transition will be an unmitigated disaster if viewers cannot receive DTV signals. At this point both outdoor and indoor DTV reception appear to be improving,³¹ but this issue must be fully resolved before the Commission requires broadcasters to terminate over-the-air analog broadcasting. That means the Commission must assure itself that high-quality over-the-air DTV tuners are available in sufficient numbers and at a low enough price to provide DTV reception that is equivalent to analog reception currently available. Accordingly, the Commission may need to revisit its tuner mandate to enact more exacting specifications for rule-compliant over-the-air DTV tuners.

From the standpoint of competition, the Commission is aware that broadcasters can't compete if their signals cannot be seen – and they can't even gain carriage on cable and satellite systems if they can't provide quality signals to cable headends or satellite receive stations. Accordingly, the Commission must recognize that an expedited transition creates a whole new set of competitive risks for broadcasters and service risks

²⁹ See *Ferree Set to Present Digital Transition Plan to Broadcasters*, COMMUNICATIONS DAILY, April 15, 2004.

³⁰ See NOI ¶ 61.

³¹ Doug Lung, *RF and NAB: DTV Reception and Interference*, July 7, 2004, available at http://www.tv-technology.com/features/On-RF/f_rf_technology-07.07.04.shtml.

for consumers. As the Commission knows, no one has real-world experience with how well DTV reception technology will perform in an environment where all broadcasters are operating at full power. As PCC has pointed out in the past, even the relatively few broadcasters currently operating at full power have created more interference than the FCC's models predicted. The Commission therefore should expect more of the same. Above all, the Commission must make sure that it is moving in a swift, but intelligent manner toward the termination of analog broadcasting. A key element of that movement will be ensuring that DTV tuners capable of reliably picking up over-the-air DTV signals are generally available, so that all Americans will maintain access to the entire free over-the-air television broadcasting system as Congress intended when it approved the plan to transition to DTV.

Finally, before the Commission commits itself to an expedited 2009 transition date, it must recall that Congress has required the Commission to extend the transition in every market until 85% of viewers can receive an undegraded over-the-air digital signal.³² At least 85% of viewers in each market must have an over-the-air tuner or digital-to-analog converter capable of downconverting every over-the-air digital format before the transition can end in that market. As far as it has been disclosed publicly, the Ferree plan utterly fails to measure up to this standard because it would count all cable and satellite subscribers that receive all eligible must-carry stations, regardless of whether they can receive those signals in an analog or digital format and regardless of whether those viewers possess a digital tuner or converter. Such a construction would transform Congress's statute, which was designed to preserve viewers' access to free

³² 47 U.S.C. § 309(j)(14).

over-the-air television, into a dead letter that would achieve just the opposite, cutting off viewers' access to free over-the-air television in every market where 85% of the viewers subscribe to an MVPD. If the Commission attempts to foist such an interpretation of the 85% statutory threshold on broadcasters and viewers, it can be certain that it will again end up in court defending an indefensible interpretation of Congress's clear commands.

CONCLUSION

If the Commission wants to successfully complete the DTV transition on an expedited basis and improve the competitive landscape in local video delivery markets, it must refocus its energies on ensuring that it is considering every television station as it makes its policy decisions, not simply the most prosperous major-market network affiliates. The best way to bring all broadcasters into the transition and to protect their ability to compete on the local level is institute multicast must-carry and give them the opportunity to make DTV work for viewers by. More and better programming is the name of the game in video competition, and multicast must-carry promises it. If the Commission allows the type of local competition envisioned by Congress when it enacted must-carry in 1992, it can be certain that the dynamic force of multicast must-carry will not only deliver more and better programming, but also will result in the many public interest gains cited above. If the Commission truly wants a more local, more

diverse, less indecent television programming universe, there is no more swift nor sure way to achieve it than by enacting full digital multicast must-carry.

Respectfully submitted,

Paxson Communications Corporation

/s/ William L. Watson

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